IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.5081 of 2006
TO
FIRST APPEAL No.5092 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPECIAL LAND ACQUISITION OFFICER - Appellant
Versus
MANSINGBHAI GOPALBHAI & ANR. - Respondents

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Appearance :

First Appeal Nos.5081 to 5086 of 2006

MR SS SHAH, GOVERNMENT PLEADER for Appellant.
MR GM AMIN for Original Claimants.
None for Respondent No.2.

First Appeal Nos.5087 to 5092 of 2006

MS KRINA P CALLA, AGP for Appellant.
MR GM AMIN for Original Claimants.
None for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 18/12/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Admitted. Mr.G.M.Amin, learned counsel, waives service of notice on behalf of the claimant/claimants in each appeal. Ms.Krina P. Calla, learned Assistant Government Pleader for the appellant, states at the Bar that interest of the appellant and that of the respondent No.2 is identical and not in conflict at all. In view of the statement made at the Bar by the learned Assistant Government Pleader, this Court is of the opinion that it is not necessary for the appellant to effect service of notice of admission of the appeals upon the respondent No.2. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, is common award dated January 10, 2005 rendered by the learned 2nd Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad (Rural) at Ahmedabad, in Land Acquisition Case

Nos.2720 of 1996 to 2731 of 1996 by which the claimants have been awarded additional amount of compensation at the rate of Rs.27.60 paise per square metre for their acquired lands over and above compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.1.20 Paise per square metre for irrigated lands and Rs.0.80 Paise per square metre for non-irrigated lands by his award dated May 28, 1996.

3. The Executive Engineer, Narmada Yojna, Division No.2/4, Saurashtra Branch Canal, Bhavnagar, proposed to the State Government to acquire the lands of Village: Chokadi, Taluka: Dhandhuka, District: Ahmedabad for the public purpose of construction of Canal under Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands specified in the proposal were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the official gazette on June 7, 1993. The landowners were thereafter served with the notices as required by Section 4 of

the Act. On receipt of notices, the owners of the lands opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report under Section 5-A(2) of the Act to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of Village: Chokadi specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of Canal under Narmada Project. Therefore, a declaration under Section 6 of the Act was issued, which was published in the official gazette on June 2, 1994. The interested persons were thereafter served with the notices for determination of the compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.30/- per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated May 28, 1996 offered compensation to the claimants at the rate of Rs.1.20 paise per square metre for irrigated lands and Rs.0.80 paise per square metre for non-irrigated

lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court. Accordingly, references were made to the District Court, Ahmedabad (Rural) at Navrangpura, where they were registered as Land Acquisition Case Nos.2720 of 1996 to 2731 of 1996.

4. On behalf of the claimants, witness Haribhai Laxmanbhai Patel, was examined at Exhibit 28. The witness mentioned that the lands acquired in the instant case were highly fertile and that each claimant was earning net profit of Rs.40,000/- per year per *vigha* from the sale of agricultural produces such as cotton, cumin-seed, *juvar,* wheat, etc. In order to establish that the lands acquired were highly fertile and that different crops were being raised by the claimants, the witness produced 7/12 extracts relating to the lands acquired at Exhibits 19 to 22. According to this witness, boundary of

Village: Chokadi was touching the boundary of Village: Parbadi and that the last survey number of Village: Parbadi was adjoining to the survey number, which was acquired from the Village: Chokadi for the purpose of construction of Narmada Canal. The witness further mentioned that the lands of Village: Parbadi which were previously acquired, were similar in all respects to the lands acquired in the instant case including fertility and that the claimants were entitled to additional amount of compensation on the basis of previous award of the Reference Court relating to the lands of Village: Parbadi. The witness produced award of the Reference Court relating to the lands of Village: Parbadi at Exhibit 25. The witness further mentioned that Ahmedabad-Bhavnagar Highway was situated at a distance of 3 Kilometres from his lands and that his village was fully developed.

Though this witness was cross-examined at length on behalf of the appellant, nothing substantial could be elicited nor the assertion made by the witness that the lands, which were acquired

from Village: Parbadi were similar to the lands acquired in the instant case could be demonstrated to be untrue.

5. On behalf of the appellant, witness Abdulbhai Ismailjibhai Patel, who was then Deputy Executive Engineer, was examined at Exhibit 34. In his examination-in-chief, the witness asserted that before awarding compensation to the claimants, the Special Land Acquisition Officer had taken into consideration the relevant factors. However, in his cross-examination, the witness had to admit that Narmada Canal was coming straight from Village: Parbadi to the *sim* of Village: Chokadi. The witness also admitted that the last survey number of Village: Parbadi and first Survey Number of Village: Chokadi were adjoining each other. It was also admitted by him that the previous award of the Reference Court relating to the lands of Village: Parbadi was accepted by the Acquiring Authority and no appeal was preferred against the same.

6. On appreciation of evidence adduced by the

parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of Village: Parbadi was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. On the basis of the said previous award, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs.27.60 Paise per square metre by the impugned award, giving rise to the instant appeals.

7. This Court has heard Ms.Krina P. Calla, learned Assistant Government Pleader for the appellant, and Mr.G.M.Amin, learned counsel for the original claimant/claimants in each appeal. This Court has also considered the paper-book supplied by the learned counsel for the claimant(s), which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

8. Though the witness for the claimants failed to substantiate his assertion that each claimant was earning income of Rs.40,000/- per year per *vigha* from

the sale of agricultural produces, there is no manner of doubt that the lands acquired in the instant case were irrigated lands. This fact stands proved from the contents of 7/12 extracts, which were produced at Exhibits 19 to 22. The record does not indicate that the claimants had claimed enhanced compensation either on the basis of yield or on the basis of comparable sale instances. What was relied upon by the claimants was previous award of the Reference Court relating to the lands of Village: Parbadi. As mentioned earlier, the witness for the claimants asserted in his testimony before the Court that the boundaries of Village: Chokadi and Village: Parbadi were touching each other. It was also mentioned by him that the last survey number of Village: Parbadi and the survey number which was acquired in the instant case for the public purpose of construction of Narmada Canal were adjoining to each other. This claim of the witness for the claimants is admitted by the witness, who was examined on behalf of the appellant. It is well-settled that the previous award of Reference Court relating to the lands of a Village, which has attained finality, can be relied

upon for the purpose of determining the market value of the similar lands acquired from the adjoining village. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award relating to the lands of Village: Parbadi for the purpose of determining the market value of the lands acquired in the instant case. However, perusal of Exhibit 25 indicates that the lands of Village: Parbadi were acquired for public purpose of construction of canal under Narmada Project pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on June 7, 1993. Therein the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.0.40 paise per square metre by his award dated April 25, 1996. Feeling aggrieved, the claimants had sought references. Accordingly, references were made to the District Court, Ahmedabad (Rural) at Navrangpura, where they were registered as Land Acquisition Case Nos.2766 of 1996 to 2778 of 1996 and Land Acquisition Case Nos.946 to 949 of 1998. On behalf of the claimants, witness Ranchhodbhai

Hirabhai Jadav was examined at Exhibit 32 whereas on behalf of the acquiring authority witness Rambhai Haribhai Solanki was examined at Exhibit 47. What was sought to be relied upon by the claimants in the said case was previous award of the Reference Court relating to the lands of Village: Ranpari. On appreciation of evidence, the Reference Court found that there was distance of about 5 Kilometres between Village: Ranpari and Village: Parbadi, but the Reference Court in the said case held that previous award of the Reference Court relating to the lands of Village: Ranpari was relevant for the purpose of determining the market value of the lands acquired from Village: Parbadi. In ultimate analysis, the Reference Court by judgment and award dated October 3, 2002, awarded additional compensation at the rate of Rs.27.60 Paise per square metre to the claimants whose lands were acquired from Village: Parbadi. This Court finds that as per the admission of the witness for the claimants himself, the distance between Village: Chokadi and Village: Parbadi is about 1½ Kilometres. As observed earlier, the Reference Court in previous award held that the distance between

Village: Parbadi and Village: Ranpari is about 5 Kilometres. Therefore, in substance, the Court would be relying upon the previous award of the Reference Court relating to the lands of Village: Ranpari for the purpose of determining market value of the lands acquired from Village: Chokadi. On the facts and in the circumstances of the case, this Court is of the opinion that interest of justice would be served if appropriate deduction is made from the price of lands of Village: Parbadi for the purpose of determining the market value of the lands acquired in the instant case from Village: Chokadi. On appropriate deduction being made, this Court is of the opinion that the claimants whose lands were acquired from Village: Chokadi would be entitled to total compensation at the rate of Rs.25/- per square metre for their acquired lands. Thus, the appeals filed by the State will have to be accepted in part.

9. For the foregoing reasons, all the appeals succeed. The judgment and award dated January 10, 2005 rendered by the learned 2nd Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad, in Land

Acquisition Case Nos.2720 of 1996 to 2731 of 1996 awarding compensation to the claimants in all at the rate of Rs.28.80 paise per square metre for irrigated lands and Rs.28.40 paise per square metre for non-irrigated lands is hereby modified and it is held that the claimants would be entitled to in all compensation at the rate of Rs.25/- per square metre for their acquired lands. The rest of the benefits granted to the claimants by the impugned award are not interfered with at all and are hereby upheld. The appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra